was limited only to any loss or damage caused by negligence and not to loss or damages resulting from any fundamental breach of their duties like theft of goods by or with the connivance of the third defendants' employees, wilful damage and storage in grossly inadequate conditions.

It is not necessary for this court to make a ruling on this proposition because from the pleadings itself it is obvious that what the plaintiffs are alleging against the third defendants is liability for loss and damage caused by their negligence.

Paragraph 14 of the statement of claim reads as follows: —

"14. Further or in the alternative the loss and damage sustained were due to the negligence of the 3rd defendants their servants and/or agents.

PARTICULARS OF NEGLIGENCE

(a) Delivering the goods in a damaged condition,
(b) Failing to deliver the said goods,
(c) Failing to have a proper system of supervision,
(d) Failing to take proper steps to ascertain the goods were intact."

There is no allegation of breach of statutory duty or wilful loss or damage.

The plaintiffs have argued that section 75A(2) is not capable of construction so as to exclude all liability imposed by statute upon the Penang Port Commission for the reason that such a construction would entail the very far-reaching and disastrous consequence of nullifying the statutory obligations imposed upon the Port Authority by virtue of section 104 and section 105 of the Contracts Act 1950 and section 65(4) of the Customs Act.

Be that as it may, where the language of the law is clear and unambiguous the court cannot but give it the straightforward and ordinary meaning. Here the language and intention of the legislature give the Port Commission protection against claims arising out of their action as agents of shipowners and charterers of ships. The court cannot deny them the protection whatever the other consequences may be, far-reaching or otherwise.

Under the circumstances the claim against the third defendants is dismissed with costs.

Order accordingly.

Solicitors: *Lim Huck Aik; Shearn, Delamore & Co.*

JUMARI BIN MOHAMED v. PUBLIC PROSECUTOR

[O.Cr.J. (Mohamed Azmi J.) March 14, 1981]

[Kuala Lumpur — Federal Territory Criminal Application No. 15 of 1980]

Criminal Law & Procedure — Petition of Appeal — Application for extension of time — Court's discretion — Criminal Procedure Code, ss. 307 & 310.

The applicant was found guilty and convicted of two charges of corruption under the Prevention of Corruption Act 1961. He was sentenced to eighteen months' imprisonment on each charge, the sentence to run concurrently. On May 12, 1980 he filed Notice of Appeal against the said conviction and sentence. On October 30, 1980 the appeal records were served on his solicitor. Under section 307 (iv), the Petition of Appeal ought to have been filed by October 13, 1980; otherwise the appeal shall be deemed to have been withdrawn under section 307 (ix). This was not done for the reasons given: (1) October 4 & 5 were Saturday and Sunday respectively; (2) October 6, counsel was engaged at the sitting of the Penang Legislative Assembly; (3) October 9, counsel was ill; (4) October 13 — the last date for filing — counsel felt that he needed more time to study the notes of evidence before filing the Petition of Appeal; (5) counsel was not the same counsel for the applicant at the trial so he was not able to study the Appeal record closely on October 13.

Held, dismissing the application: (1) the discretion conferred on a judge by section 310, Criminal Procedure Code applies to all applications for extension time pertaining to criminal appeals to the High Court and they include an application to file Notice of Appeal out of time;

(2) the reasons put forward were too flimsy and frivolous for the court to exercise discretion under section 310, Criminal Procedure Code;

(3) there was nothing on record to show that the Applicant's conviction was wrongful; no substantial justice would be done if the extension of time were allowed in this case. For the purpose of doing substantial justice, the court must bear in mind that justice must be done not only to the convicted person but also to society at large on whose behalf the Public Prosecutor acts;

(4) an extension of time to file Petition of Appeal or to amend such petition out of time should not be granted as a matter of course.

Cases referred to:-

(1) *Veerasingam* v. *Public Prosecutor* [1958] M.L.J. 76.
(2) *A. Dickinson* v. *Public Prosecutor* [1955] M.L.J. 191.
(3) *Wong Swee Chin* v. *Public Prosecutor* [1977] 2 M.L.J. 194, F.C.
(4) *R.* v. *Nagalingam* [1935] M.L.J. xxix.
(5) *R.* v. *Moona Mohamad Hussain Maricar* [1936] M.L.J. 36.

CRIMINAL APPLICATION.

Karpal Singh (*C. Kandiah* with him) for the applicant.

Suriyadi bin Halim Omar (*Nik Abdul Rahman bin Nik Mat* with him) (Deputy Public Prosecutor) for the respondent.

Mohamed Azmi J.: This is an application by Notice of Motion under section 310 of the Criminal Procedure Code for extension of time to file Petition of Appeal out of time.

The application, which is opposed by the Public Prosecutor, first came up for argument on November 17, 1980. It was then adjourned to a date to be fixed by Senior Assistant Registrar, to enable the applicant's

solicitor, Mr. Karpal Singh, to file a further affidavit in support of the application. When the case came up for final disposal on March 22, 1981, the application was dismissed. The applicant has now appealed against the said decision.

Section 310 of the Criminal Procedure Code provides:

"A judge may, on the application of any person desirous of appealing who may be debarred from so doing upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the Magistrate and to the parties as such judge shall consider desirable, in order that substantial justice may be done in the matter."

The powers, principles and procedure governing the grant of an extension of time to lodge a Petition of Appeal and the permitting of amendments to a Petition of Appeal, came up for determination by the Court of Appeal (the forerunner of the Federal Court) in *Veerasingam* v. *Public Prosecutor*.[1] At page 79, Thomson C.J. has this to say:

"The only fetter which section 310 places upon the exercise of the discretion which it gives to the judge is that it shall be exercised 'in order that substantial justice may be done'. Clearly, to exercise his discretion properly the judge must apply his mind to all the relevant material. He must consider the circumstances of the original trial. He must consider the original Petition of Appeal. And he must consider the circumstances which are now urged upon him to induce him to allow any departure from or addition to the original Petition of Appeal. He must consider his own powers as to such matters as the granting of adjournment and the requiring of Notice to be given. And then he must exercise his discretion as he sees fit in order that substantial justice may be done in the matter. It may be that he may find it helpful to look at what has been done in some other case by some other judge but if he does, he must be careful to look at what that other judge has done merely as an illustration and not as laying down any judicial precedent. . . ."

Pausing here for a moment, it is interesting to note that although *Veerasingam* case has overruled the two prerequisites for the exercise of the court's discretion under section 310 laid down by Bellamy J. in *A. Dickinson* v. *Public Prosecutor*,[2] it would appear from the judgment of Thomson C.J. at page 79, left column paras. G to I, that had the two conditions, viz. that, firstly, circumstances exist which justify an extension of time and, secondly, that the applicant has a reasonable prospect of success on the appeal, been stated in the alternative and not cumulatively, the Court of Appeal might have been prepared to accept Bellamy J.'s ruling "as a tolerably accurate piece of inductive reasoning based upon a number of cases in which the English Court of Criminal Appeal has granted or refused similar indulgence to appellants". I note, however, that the facts in both *Dickinson* case and *Veerasingam* case involved an application by the appellant to amend the Petition of Appeal out of time by adding further grounds of appeal. Be that as it may, I think the decision in *Veerasingam* case applies not only to an application for extension of time for amending Petition of Appeal but also to an application for extension of time for filing Petition of Appeal under section 307(iv) of the Criminal Procedure Code. Having regard to the provision of subsection (iv) read with subsection (ix) of section 307, there appears to be no reason why a distinction in principle should be made between them when considering an application for extension of time under section 310. The learned Deputy Public Prosecutor has referred to the case of *Wong Swee Chin* v. *Public Prosecutor*[3] where the Federal Court took the view that for an application for extension of time to succeed, there had to be strong grounds or substantial reasons. But, in that case, the court was dealing with an application for extension of time to file Notice of Appeal. We are here dealing with a Petition of Appeal, and under subsection (ix) of section 307 of the Criminal Procedure Code, there is a proviso which states that, ". . . nothing herein contained shall be deemed to limit or restrict the powers conferred upon a judge by section 310". It is significant that such proviso is absent in subsection (i) of section 307 which deals with Notice of Appeal. Be that as it may, it is clear law that the discretion conferred on a judge by section 310 applies to all applications for extension of time pertaining to criminal appeals to the High Court and they include an application to file Notice of Appeal out of time. But where the application is for extension of time to file Petition of Appeal or to amend such Petition by adding further grounds of appeal, then the principle enunciated in *Veerasingam* v. *Public Prosecutor* (*ante*) should apply.

Now, what are the circumstances of this case to enable the court to exercise its discretion "in order that substantial justice may be done"? The first affidavit in support of the application is defective in that it did not contain all the relevant circumstances of the original trial. This defect has been rectified by the second affidavit sworn by Mr. Karpal Singh on January 7, 1981. Briefly, the facts of this case are as follows. The applicant was found guilty and convicted by the Kuala Lumpur Sessions Court of two charges of corruption under the Prevention of Corruption Act, 1961. He was sentenced to eighteen months' imprisonment on each charge — the sentences to run concurrently. On May 12, 1980, i.e. within the prescribed period under section 307(i) of the Criminal Procedure Code, he filed Notice of Appeal against conviction and sentence. On October 3, 1980, the appeal records which, according to the learned Deputy Public Prosecutor, consist of 23 pages of notes of evidence and 5 pages of grounds of judgment were served on the applicant's solicitor at the Kuala Lumpur Branch of Mr. Karpal Singh's Firm. Under section 307(iv), Petition of Appeal ought to have been filed by October 13, 1980; otherwise the appeal shall be deemed to have been withdrawn under section 307(ix). This was not done because of the following reasons: —

(1) October 4 and 5 were Saturday and Sunday respectively.

(2) October 6, Mr. Karpal Singh was engaged at the sitting of the Penang Legislative Assembly.

(3) October 9, on which date Mr. Karpal Singh had intended to go to Kuala Lumpur, he was taken ill.

(4) October 13, i.e. the last date for filing, Mr. Karpal Singh attended his Kuala Lumpur Branch and after perusing the notes of evidence and grounds of judgment, he found he needed time to study them more closely to enable him to put up the Petition of Appeal.

(5) Mr. Karpal Singh was not counsel for the applicant at the trial and so he was unable to study the appeal record closely on October 13.

Having considered all the circumstances of the case, I find the reasons put forward are too flimsy and frivolous for me to exercise my discretion under section 310 of the Criminal Procedure Code in favour of the applicant. As solicitor engaged in the prosecution of the appeal, it is the duty of Mr. Karpal Singh to be diligent once the record of appeal had been served on Friday, October 3, 1980. No reasonable explanation is given why October 4 and 5 (though a Saturday and Sunday respectively) should not be used for perusing the appeal record and preparing the Petition of Appeal, particularly when Mr. Karpal Singh fully knew that he had to attend the Penang State Legislative Assembly meeting on October 6. The two affidavits do not disclose the duration of the Legislative Assembly meeting and it would appear that Mr. Karpal Singh was quite free on October 7 and 8. With full knowledge that the Petition of Appeal had to be filed by October 13, there is no conceivable reason why he chose to wait and attend to its preparation only on the 9th, particularly when he knew that on that date he had to appear in Kuala Lumpur High Court in respect of Originating Motion No. 107 of 1978 and, as such, in all probabilities, he would not have enough time to deal with the criminal appeal. There is no evidence to show for how long Mr. Karpal Singh was ill on the 9th. The two affidavits in support merely show that, firstly, Mr. Karpal Singh was busy and as he is entitled to do, he chose to give priority to his duty as an Assemblyman in preference to his duty as a solicitor and counsel for the applicant, and, secondly, he wanted to relax on Saturday and Sunday knowing that the period for filing Petition of Appeal had started to run. In fact, no Petition of Appeal had been prepared when this application came up for hearing for the first time on November 17, 1980, i.e. more than a month after the last date for filing the petition. Nor was it ready on March 2, 1981 when the application was disposed of. Further, there is nothing on record to show that the applicant's conviction is wrongful. In the circumstances, I am of the view that no substantial justice would be done if the extension of time were allowed in this particular case. For the purpose of doing substantial justice, the court must bear in mind that justice must be done not only to the convicted person but also to society at large on whose behalf the Public Prosecutor acts. As stated by Thomson C.J. in *Veerasingam* case at page 78: "It is just as imperative that a rightful conviction should be successfully defended as it is that a wrongful one should be successfully attacked".

Further, as was held by Thomson C.J. in *Veerasingam* case (*ante*), the court is entitled to look at what other judges have done as an illustration. Thus, in *R.* v. *Nagalingam,*[4] the grounds alleged were that counsel for the appellant, as in the present case, had been engaged elsewhere and that the length of the record involved considerable time in transcribing it. The court (Huggard C.J., Burton and Mills JJ.) ruled that neither of these grounds was sufficient and the application to amend Petition of Appeal was refused. *Nagalingam's* case was followed by Terrell J. in *Rex* v. *Moona Mohamed Hussain Maricar.*[5] In my view, an extension of time to file Petition of Appeal or to amend such petition out of time should not be granted as a matter of course.

Having regard to all the circumstances of this particular case and in exercise of the discretion conferred by section 310 of the Criminal Procedure Code, I dismiss this application.

Application dismissed.

Solicitors: *Karpal Singh & Co.*

T.R. MAHESUVARY v. LEE YIN SHIN & ANOR.

[A.C.J. (George J.) March 19, 1981]

[Raub — High Court Civil Appeal No. 1 of 1981]

Landlord and Tenant — Rent-controlled premises — One year notice to quit required — Notice given less than required period — Subsequent Notice sent — Notice bad ab initio not curable by subsequent "corrective" notice — Control of Rent Act, 1966, s. 16(i)(f)(ii).

The plaintiffs, owners and landlords of the premises known as No. 89 Jalan Besar, Kuala Lipis, had claimed against the defendant vacant possession of the said premises as well as double rent and costs. The said premises were controlled premises within the meaning of the Control of Rent Act 1966. The plaintiffs were required, *inter alia,* to give notice of not less than one year to the defendant. A Notice dated June 30, 1978 was sent to and received by the defendant. The Notice required the defendant to give up vacant possession of the premises on or before May 31, 1979 which meant that even if the Notice was received by the defendant on the day it was written and posted, it only gave her 11 months' notice. The first plaintiff in his evidence testified that on realising that the notice was short by one month he instructed his solicitors on July 11, 1978 to send another notice to the defendant requiring her "to quit on June 30, 1979". He said that he had himself "informed the defendant verbally to quit the premises on or after June 30, 1979". A copy of the second Notice which he had instructed his solicitors to send to the defendant was produced.

The defendant appealed.

Held, allowing the appeal: (1) the learned magistrate erred in concluding "on a preponderance of probabilities" that the defendant had received the second notice. The learned magistrate should have invoked section 114(g) of the Evidence Act and should have held that the second notice was neither sent to nor received by the defendant;

(2) even if it had been received by the defendant and even if the first plaintiff had after realising the mistake in the first notice told the defendant to "quit the premises on or after the 30th June, 1979" it cannot be said that the required one year notice had been given to the defendant. A notice that is bad *ab initio* cannot be cured by a subsequent "corrective" notice, even when the second notice is given before the expiry of the time given by the first notice;

(3) the fact that the date given in the first notice was obviously a slip on the part of the plaintiffs or their legal advisers was of no help to the plaintiffs in that while there may be a natural temptation to put a strained construction on language in aid of people who have been unfortunate enough to make slips, such a temptation must be resisted because documents are not to be strained and principles of construction are not to be outraged in order to do what may appear to be fair in an individual case;

(4) the defendant was protected by the Control of Rent Act 1966 and whatever may be the equities to take away from her the protection she has enjoyed there ought to be a strict adherence of the requirements of the Act.